IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

MFA.No. 93 of 2001(B)

CA.16/1997 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANT:
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SEECRETARY, GOVT OF KERALA, TRIVANDRUM.

2. THE CUSTODIAN AND CONSERVATOR OF VESTED FOREST, ARANYA BHAVAN FOREST COMPLEX, OLAVAKKODE, PALAKKAD.

BY GOVERNMENT PLEADER M.P.PRAKASH

RESPONDENTS:
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1. CHELLAMMA, W/O.NARAYANAN, AGED 48 YEARS, SWASTHAM.

2. SABU, S/O.NARAYANAN, AGED 30 YEARS, AGRICULTURIST.

3. SAJEEV, S/O.NARAYANAN, AGED 28 YEARS, AGRICULTURIST.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.JOJI VARGHESE
SRI.M.HARISHARMA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17.12.2007, THE COURT ON 17/12/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 93 OF 20O1

Dated this the 17th day of December, 2007

JUDGMENT

Koshy, J.

Respondents 3 in number filed an application before the Forest Tribunal that their possession of 47 cents of land owned by them is interfered by the forest officials, contending that it is a private forest vested under Section 3(1) of the Kerala Private Forests (Vesting & Assignments) Act (in short, 'the Act'). The application was considered by the Tribunal in detail. The term, 'private forest' is defined in Section 2(f) of the Act. Admittedly, the area in question was in Thrissur district and not covered by the MPPF Act. With regard to the other areas, to be a private forest it should be a forest not owned by the Government including waste lands which are enclaves within wooded areas. The Commission Report shows that it is not a wooded area or enclaves within wooded area. Merely because after demarcation the forest officials notified that it is a part of forest, it will not become a private forest even if there is no notification. If it is a private forest, it is automatically vested in the government as provided under Section 3(1) of the Act. Here, the Commission Report has clearly stated that it is not a wooded area and it is not a forest, when the Act came into force. The earliest documents regarding the

land (partition deed executed as 53 of 1097 ME) also show that it is a paramba and not a private forest. The object of the Act is also not to protect the forest, but to distribute the private forest to the agriculturists to promote agriculture. Here, the total extent of land owned by three respondents is only 47 cents and no purpose will be served if it is given to other agriculturists. In any event, the finding of the Tribunal, on the basis of the oral evidence as well as the evidence of the Commission Report, is very clear that it was not a private forest. There were no forest trees in the area. According to the Commission Report, it was a plain area. The Commission also found that there are 161 cashew trees aged 17 years, apart from 6 mango trees, aged more than 20 years. The southern and eastern boundaries of the properties are parambas and the northern boundary of the property is Malampuzha canal. Exhibits A1 and A2 are the previous documents. That also indicate that it is a paramba and never a forest. From the totality of the evidence, the Tribunal correctly found that it is not a private forest. We see no ground to interfere with the findings entered into by the Tribunal in the impugned order. The appeal is dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.93 OF 2001

JUDGMENT

17.12.2007